



Office of the Mayor

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: June 27, 2023

Item Number: 56

Item Description: **Adopting a temporary exemption from the collection of taxes under BMC Chapter 9.04.136(D): Tax Rate for Non-Medical and Medical Cannabis Businesses**

Submitted by: **Vice Mayor Bartlett and Mayor Arreguín**

The City Attorney has advised that in order for the City Council to temporarily exempt non-medical and medical cannabis businesses from the gross receipts tax, it needs to be in the form of an ordinance requiring a first and second reading. The City Attorney's office has prepared the attached ordinance to allow Council to take action on this proposal.

The proposed ordinance would exempt for a period of January 1, 2023 to July 1, 2025 all medical and non-medical cannabis businesses from the 5% tax on gross receipts. The tax exemption would apply retroactively to the beginning of the calendar year, which is how taxes are levied. Any taxes paid to date by a cannabis business would be held as a credit against future taxes due.

ORDINANCE NO. -N.S.

ORDINANCE AMENDING SECTION 9.04.136 OF THE BERKELEY MUNICIPAL CODE TO TEMPORARILY SUSPEND TAXATION OF CANNABIS BUSINESSES ABOVE THE RATES CHARGED FOR NON-CANNABIS BUSINESSES OF THE SAME TYPE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 9.04.136 is amended to read as follows:

9.04.136 Cannabis businesses.

A.

1. Every Medical Cannabis Business that is not a Nonprofit Organization as defined in Section [9.04.305](#), and every Non-Medical Cannabis Business, shall pay an annual tax for each thousand dollars of gross receipts as provided in Section [9.04.240](#). If the "Regulate, Control and Tax Cannabis Act of 2010" on the November 2010 state ballot passes and takes effect, the maximum gross receipts rate that may be applied to medical cannabis businesses shall be reduced to 1.8%, or \$18 per \$1000.

2. Except as provided in paragraph 1 of this subdivision, the tax on Medical Cannabis Businesses that is imposed by this Section shall be phased in as follows:

(a) The tax payable in 2011 shall be \$18 per \$1000 of gross receipts after June 30, 2010.

(b) The tax payable in 2012 shall be \$25 per \$1000 of gross receipts after January 1, 2011.

(c) The tax payable in subsequent years shall be \$25 per \$1000 of gross receipts during the preceding calendar year.

3. Temporary Exemption

(a) Every Medical Cannabis Business and every Non-Medical Cannabis Business shall be temporarily exempt from the tax rates provided in this section and Section 9.04.020 for the period beginning January 1, 2023 and ending July 1, 2025. This temporary exemption shall apply retroactively beginning January 1, 2023. Payment of taxes due for calendar year 2022 will still be applicable.

(b) For the period beginning January 1, 2023 and ending July 1, 2025, in lieu of paying the Medical Cannabis Business and Non-Medical Cannabis Business tax

rates provided for in this section and Section 9.04.020, each cannabis business will pay the business license tax rate for the business type that most closely represents the nature of its current operations, e.g. retail trade (Section 9.04.145), manufacturing (Section 9.04.185), and wholesale trade (9.04.150).

(c) Any late penalties levied between the period of January 1, 2023 and enactment of this amendment including but not limited to penalties provided for in Section 9.04.110 and 9.04.115 shall be waived. Any interest on late penalties accrued pursuant to Section 9.04.120 during this same period shall also be waived.

(d) Any tax payments already made for the first quarter (January 1, 2023 to March 31, 2023) of the 2023 fiscal year shall be applied as a credit against the payment of future taxes or fee payments made pursuant to this Section, including payments due under subsection 9.04.136.A.3.b.

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B. For purposes of this Chapter:

1. "Medical Cannabis Business" means any activity regulated or permitted by Chapter [12.26](#) or Title [23](#) that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing, any part of the plant Cannabis sativa L. or any of its derivatives, pursuant to Health & Safety Code sections [11362.5](#) and [11362.7-11362.83](#).

2. "Non-Medical Cannabis Business" means any of the activities described in the preceding paragraph that are not conducted pursuant to Health & Safety Code sections [11362.5](#) and [11362.7-11362.83](#), but are otherwise authorized by state law.

3. "Cannabis Business" includes both Medical Cannabis Businesses and Non-Medical Cannabis Businesses.

4. A Cannabis Business shall be deemed a "Business" under Section [9.04.010](#) and as that term is used in this Chapter.

C. For purposes of this Section and Section [9.04.305.A.2](#), "gross receipts" includes any monetary consideration for medical cannabis whatsoever, including but not limited to: membership dues; reimbursement pursuant to Health & Safety Code sections [11362.5](#) and [11362.7-11362.83](#); and any money received for wholesale or retail sales.

D.

1. The annual tax rate imposed by Section [9.04.240](#) on Non-Medical Cannabis Businesses shall apply to the sum of gross receipts as defined in Section [9.04.025](#) and this Section.

2. The City Council may impose the tax authorized by this Section at a lower rate, and may establish an exemption for Cannabis Businesses whose gross receipts are below a specified amount. The Council may adopt different rates and exemption

levels for Medical and Non-Medical Cannabis Businesses. No action by the Council under this paragraph shall prevent it from subsequently increasing the tax rate for any type of Cannabis Business to the maximum specified in this Section and Section [9.04.240](#) or from modifying or eliminating any exemption.

E. In order to aid in the City's collection of taxes due under this Chapter and ensure that all Cannabis Businesses are taxed consistently to the best of the City's ability, beginning January 1, 2011, in any Cannabis Business, that obtains any product containing Cannabis sativa L. or any of its derivatives for monetary consideration that constitutes gross receipts under subdivision [\(C\)](#) for the provider of that Cannabis sativa, shall either:

1. Report quarterly to the City all such transactions, the monetary consideration involved, and the identity and contact information of the person or entity to whom or to which monetary consideration was provided; or
2. Collect the tax that would be payable as a result of the transaction from the person or entity to whom monetary consideration was provided and remit it to the City.

F. The City Manager may promulgate regulations to implement and administer this Section, including allowing Medical Cannabis Businesses to remit taxes more frequently than annually. (Ord. 7160-NS § 1, 2010)

Section 2. Severability

If any section, subsection, sentence, clause, phrase, or word of this Ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Ordinance. The Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.
